

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 7, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-0486

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE MATTER OF THE ESTATE
OF FRANK GODON, DECEASED:**

MARY FREDETTE,

Appellant,

v.

WOOD COUNTY TRUST COMPANY,

Respondent.

APPEAL from a judgment of the circuit court for Wood County:
DENNIS D. CONWAY, Judge. *Affirmed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Mary Fredette appeals from the final judgment entered in the probate of the will of Frank Godon. Fredette, a residual beneficiary under Frank's will, objects to the various decisions made by the court during the probate proceedings. We conclude that the court correctly

interpreted the will provisions and that Fredette has waived any objection to the court's prior decisions. Therefore, we affirm.

Frank Godon executed a will on March 4, 1988. Later that day, Frank died in a house fire. A neighbor, Larry Winters, was injured while attempting to rescue Frank from the fire. In his will, Frank left all of his property to his brother George. The will provided that if George predeceased him, a specific bequest would be made to Joseph J. Bilgrien, and "[a]ll of the remaining property which I own at my death is hereby given, in equal shares" to eight named beneficiaries. Among those named persons are Fredette, Winters, and George Pelot, Sr. Pelot was nominated as Personal Representative.

The will further provided:

FIFTH: If any of [the eight named residual] beneficiaries predecease me, the interest which would have passed to such beneficiary had he survived me, is hereby given by right of representation to the living issue of said deceased beneficiary who survive me. If there is no living issue of said deceased beneficiary, my property is hereby given in such shares and to such beneficiaries as would have been the distribution under this Will if that beneficiary had never lived.

SIXTH: If any beneficiary dies prior to the entry of an order, decree or judgment in my estate distributing the property in question, or within five months after the date of my death, whichever is earlier, any interest which would have passed to said beneficiary under other provisions of this will are to be disposed of according to the plan of distribution which would have been effective under this will if such beneficiary had predeceased me. It is my intention that any property or interest which is distributed from my estate as a result of any court order, decree, or

judgment will not be revoked or otherwise affected by the subsequent death of the distributee.

George Godon died on May 7, 1988. Frank's will was admitted to probate on May 10, 1988, and Pelot was appointed personal representative. Because Pelot was also the personal representative of George Godon's estate, Wood County Trust Company was appointed successor personal representative in May of 1989. Pelot died on April 23, 1993. The final judgment in the estate was entered on January 5, 1994. Further facts will be stated below as necessary.

Fredette first argues that the heirs of George Pelot, Sr., should receive nothing under the will because Pelot died before the entry of the final judgment. Fredette cites various cases and statutes that she believes require Pelot's share in the estate to be divided among the surviving named beneficiaries, rather than passing to Pelot's estate.

The plain language of the will defeats Fredette's argument. Under ¶ 6 of the will, a gift to a beneficiary shall lapse if the beneficiary "dies prior to the entry of an order, decree or judgment in my estate distributing the property in question, or within five months after the date of my death, *whichever is earlier.*" (Emphasis added.) Although Pelot died before the distribution of property, he did not die within five months of Frank's death. Therefore, under the will, Pelot's legacy did not lapse.

Fredette also challenges the court's decisions involving Larry Winters, the neighbor injured while trying to save Frank from the fatal fire. Winters filed a personal injury action against Frank's estate. The estate retained counsel, and a compromise settlement was reached. On June 15, 1989, the tentative settlement was presented to the probate court and a hearing was held. Fredette appeared at that hearing, with counsel, and expressly approved the settlement. The written order resolving Winters' claim against the estate was entered on September 25, 1989.

Fredette concedes that she approved the settlement of Winters' claim. On appeal she argues that the court erred by approving the settlement without notice to the other beneficiaries. Fredette, however, has no standing to

raise an objection on behalf of the other beneficiaries. Contrary to Fredette's contention, the record suggests that notice was given to all of the named beneficiaries throughout the probate proceeding. The other beneficiaries have not challenged the court's orders, and Fredette's attempted objection on their behalf fails.

Fredette next contends that "the real property of Frank Godon converted to personalty upon his death." Fredette cites to *Estate of Hustad*, 236 Wis. 615, 296 N.W. 74 (1941) and *Estate of Bisbee*, 177 Wis. 77, 187 N.W. 653 (1922), both of which discuss the doctrine of "equitable conversion." However, Fredette does not develop her argument nor indicate why the doctrine should be applied in this case. We need not consider an argument that is inadequately briefed. *Fryer v. Conant*, 159 Wis.2d 739, 746 n.4, 465 N.W.2d 517, 520 (Ct. App. 1990).

Fredette next asserts that "upon the death of George Godon, his interest in the will of Frank Godon immediately vested in the substitutionary legatees." As with the prior argument, Fredette does not develop her position beyond citation to a single case.

Moreover, the plain language of Frank Godon's will resolves the question of George's interest. We note, as does the respondent, that the estate of George Godon does not challenge the court's interpretation of the will that excludes it from receiving any of Frank's estate. George's estate recognized that George's death within five months of Frank's death makes George "predeceased" within the terms of Frank's will. Fredette lacks standing to assert a contrary position on behalf of George's estate.

Lastly, Fredette takes issue with the disposition of the proceeds of an auction at which property found on Frank's farm was sold. Fredette asserts that the personal representative transferred part of the proceeds from the auction to George's estate without authority. The record defeats Fredette's argument.

At the June 15, 1989 hearing, the probate court also addressed Fredette's objection to the inventory that Pelot had submitted to the court for

approval. Considerable testimony was given at the hearing concerning whether Frank or George owned various assets that had been sold at the auction. The transfer of funds that Fredette complains of appears to have been undertaken to "balance the books" between the two estates after the auction.

At the close of testimony, Fredette's attorney stated: "Under the circumstances, the issues that we had raised primarily in this matter today, the disposition in the cash and disposition of the copper which we concede was an asset in George Godon's Estate, we are not in a position to being able to refute the testimony of Mr. Pelot." The court then approved the inventory. The record shows that Fredette withdrew her objection at the June 15, 1989 hearing. She cannot revive it at this late date.

Because Fredette does not prevail on any of her objections to the final judgment, we affirm.

By the Court.--Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.